

EXHIBIT 2

CERTIFIED COPY

1
2
3
4
5
6 IN RE: TEXAS CIVIL INVESTIGATIVE DEMAND
7 TO FIRST DATABANK, INC.
8
9
10

11 ATTORNEYS' EYES ONLY
12 CONFIDENTIAL EXAMINATION UNDER OATH
13 OF
14 PATRICIA KAY MORGAN
15 MONDAY, JANUARY 28, 2002
16 PAGES 1 -161; VOLUME 1
17
18
19
20

21 BEHMKE REPORTING & VIDEO SERVICES
22 BY: SUZANNE I. ANDRADE, CSR # 10682
23 1320 ADOBE DRIVE
24 PACIFICA, CALIFORNIA 94044
25 (650) 359-3201

1
BEHMKE REPORTING & VIDEO SERVICES
(650) 359-3201

FDB-AWP 00556
HIGHLY CONFIDENTIAL

1 wholesaler to determine whether you've
2 received accurate net wholesale pricing from a
3 manufacturer?

4 A. The definition is: Published
5 wholesale price from the manufacturer. So no,
6 we would not survey the wholesalers on that.

7 Q. Is AWP a published price?

8 A. Yes, sir, it is.

9 Q. So why would you survey a
10 wholesaler, then, if it's a published price?

11 A. To make sure we're staying in
12 agreement. There's been lots of movement in
13 the marketplace. We want to make sure that we
14 are up-to-date with their information.

15 Q. Wouldn't the same hold true for net
16 wholesale? If there's been movement in the
17 marketplace with a published AWP, would it not
18 be necessary from time to time to survey and
19 determine the accurate price?

20 A. Wholesale net price comes from the
21 manufacturer, so we don't survey a wholesaler.
22 The average wholesale price, AWP, comes from
23 the wholesalers. It's an average of the
24 price, published price from the wholesalers.

25 Q. And I understand that. And my

67

BEHMKE REPORTING & VIDEO SERVICES
(650) 359-3201

FDB-AWP 00622
HIGHLY CONFIDENTIAL

1 question is: Couldn't you survey wholesalers
2 to verify whether a wholesale net price is
3 accurate?

4 A. But if it's the published price,
5 we're both using the same information.

6 Q. And wouldn't the same hold true with
7 a published AWP? Regardless of where it comes
8 from, why would you need to survey a published
9 AWP?

10 A. Because it's coming from more than
11 one place. The wholesale acquisition cost
12 applies to an NDC number. It comes from the
13 manufacturer. The manufacturer can only have
14 one NDC number. So the average wholesale
15 price, that same NDC number, can be sold by
16 more than one wholesaler.

17 Q. Is it your understanding that it
18 actually works that way, that different NDC
19 numbers will have multiple AWPs?

20 A. They could have different prices
21 from the wholesalers, yes, sir.

22 Q. Did that happen?

23 A. Yes, sir.

24 Q. Would it surprise you that
25 manufacturers admit that they set the AWP?

68

BEHMKE REPORTING & VIDEO SERVICES
(650) 359-3201

FDB-AWP 00623
HIGHLY CONFIDENTIAL

1 A. It would not surprise me, because
2 many think they do set the AWP, but they don't
3 for First DataBank.

4 Q. Why don't they for First DataBank?

5 A. Because we survey wholesalers.

6 Q. If you call a wholesaler -- if you
7 call three or four different wholesalers, and
8 they're all receiving the same AWP from the
9 same manufacturer, how could they possibly be
10 different?

11 A. Because the manufacturer doesn't set
12 the AWP.

13 Q. Well, let's assume hypothetically
14 that a manufacturer sets an AWP, discloses
15 that to three or four wholesalers; you, in
16 turn, surveyed those three or four
17 wholesalers. Aren't they going to then report
18 the same AWP that they have just transferred?

19 A. No, sir.

20 Q. Why would they change the AWP that
21 they received from the manufacturer?

22 A. You would need to ask them that.
23 But there are numerous examples where the AWP
24 given by the manufacturer -- the markup -- I
25 survey for the markup from the wholesaler.

1 And there are numerous examples where the
2 wholesaler does not agree with what the
3 manufacturer has suggested the AWP be.

4 Q. Are you familiar with a term known
5 as SWP?

6 A. Yes, sir.

7 Q. What does that stand for?

8 A. Suggested wholesale price.

9 Q. How does suggested wholesale price
10 differ with average wholesale price?

11 A. Suggested wholesale price is the
12 wholesale price suggested by the manufacturer.
13 Average wholesale price on our database is the
14 surveyed AWP price.

15 Q. Outside of the context of First
16 DataBank, is it your understanding that other
17 price publishing companies treat SWP and AWP
18 as the exact same?

19 A. I don't really have a knowledge of
20 it. I've been told that other competitors
21 have different prices than we do, but I don't
22 go exploring why.

23 Q. Do manufacturers send First DataBank
24 documentation of what their AWP is for a given
25 drug?

70

BEHMKE REPORTING & VIDEO SERVICES
(650) 359-3201

FDB-AWP 00625
HIGHLY CONFIDENTIAL

1 A. They send suggested AWP's, but that's
2 not my definition, so whatever they put down
3 is irrelevant to me.

4 Q. What if they send you a document and
5 they entitle information they're sending you
6 "AWP" --

7 A. We would key that. It would go into
8 the SWP field.

9 Q. And why is that?

10 A. Because it's their suggested
11 wholesale price. They're not a wholesaler.

12 Q. In First DataBank rules only --
13 strike that.

14 Under First DataBank rules,
15 wholesalers exclusively disclose AWP?

16 A. That's correct.

17 Q. And manufacturers never disclose
18 AWP?

19 A. They can suggest one. If it happens
20 to disagree with the wholesaler, we go with
21 the wholesaler's price.

22 MS. WONG: Can I ask a clarifying
23 question? For the initial setting of an AWP,
24 where would that come from, then?

25 THE WITNESS: Wholesalers.

71

BEHMKE REPORTING & VIDEO SERVICES
(650) 359-3201

FDB-AWP 00626
HIGHLY CONFIDENTIAL

1 MS. WONG: At the initial entry?

2 THE WITNESS: Mm-hmm.

3 BY MR. ANDERSON:

4 Q. Now, let's go back to these
5 wholesaler surveys. What would prompt First
6 DataBank to perform a survey?

7 A. A new manufacturer, changes in the
8 marketplace, someone suggesting that we had
9 the markup incorrectly.

10 Q. What kind of changes in the
11 marketplace would prompt a wholesaler survey?

12 A. Mergers, divestitures.

13 Q. Would a customer request prompt a
14 wholesaler survey?

15 A. Yes, it would.

16 Q. When a wholesaler survey is
17 performed, what items of information are
18 surveyed?

19 A. I call up and ask what markup they
20 have applied either to the Labor Code or to
21 the exact NDC number.

22 Q. Markup applied to what price?

23 A. Wholesale acquisition.

24 Q. Is it your understanding that
25 manufacturers set wholesale acquisition?

72

BEHMKE REPORTING & VIDEO SERVICES
(650) 359-3201

FDB-AWP 00627
HIGHLY CONFIDENTIAL